What we heard – views on Canada's draft national report under the Universal Periodic Review

Background

In January 2018, Canada shared its draft national report with National Indigenous Organizations (NIOs), Indigenous groups, and civil society organizations to gather their views. One National Indigenous Organization and fifteen non-governmental organizations[1] provided comments on the draft report. All information that was provided was reviewed and conveyed to the federal departments and agencies responsible for the subject matter covered and provincial and territorial governments.

This report provides a summary of views that Canada received in relation to its draft national report. The summary does not purport to be comprehensive, but rather provides examples of some of the key human rights priorities of organizations that provided comments. For ease of reference, this annex is organized in the thematic headings as they appear in Canada's national report.

What we heard

Methodology and engagement

Organizations noted the limited opportunity allotted to civil society organizations to provide feedback throughout the report's elaboration and recommended the establishment of a formal consultation process.

It was indicated that no reference was made to the outcomes of Canada's reviews before United Nations (UN) treaty bodies that have occurred since its last UPR in 2013, and there were calls for the enhancement of Canada's approach to follow-up and implementation of UN recommendations, including an implementation strategy for accepted UPR recommendations.

Canada was encouraged to fully engage in the international human rights system, particularly through treaty ratification. Some organizations noted the absence of a substantive update regarding the status of Canada's possible ratification of international human rights treaties that it has not yet ratified, namely the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, the *International Convention for the Protection of All Persons from Enforced Disappearance* as well as the *Arms Trade Treaty*. There was also a call for Canada to accede to the *American Convention on Human Rights*.

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[1] Assembly of First Nations; L'Action des chrétiens pour l'abolition de la torture; Action Canada for Sexual Health and Rights; Amnesty International Canada; Canadian HIV/AIDS Legal Network; Comité d'action contre la traite humaine interne et internationale; Canadian Civil Liberties Association; Canadian Federation of University Women; Colour of Poverty – Colour of Change; Chinese & South East Asian Legal Clinic; Council of Agencies Serving South Asians; Ontario Council of Agencies Serving Immigrants; South Asian Legal Clinic of Ontario; Congregation of the Sisters of Saint Anne; Lawyers Without Borders Canada; Service Intercommunautaire d'Animation Franciscaine.

Promotion and protection of human rights

The introduction of Charter Statements in Parliament was welcomed, but it was noted that the practice was not sufficient to allow Parliament to meet its responsibility to ensure that legislation is in compliance with the *Canadian Charter of Rights and Freedoms*. A more comprehensive practice was recommended that considers Charter implications through in-depth analysis that informs meaningful debate in Parliament and allows for public accountability.

1. Rights of Indigenous Peoples

A National Indigenous Organization noted that the report does not reflect statements by the Government of Canada regarding "the role and impacts of colonialism and of policies that have been based in denial and termination of rights" and the significant work that is required to reflect the policy shift in the government's relationship with Indigenous Peoples. Shortcomings of some of the forums dedicated to addressing Indigenous issues were also referenced, including the Working Group of Federal Ministers and the Federal-Provincial-Territorial Indigenous Forum, which were criticized for obscurity on their role and purpose, a poor record on results, and the level of engagement with Indigenous peoples.

Some non-governmental organizations stated that the report frames the human rights issues of Indigenous Peoples in a manner that minimizes the Government's past role in their systemic discrimination and understates the scale of the gaps faced by Indigenous Peoples. Noted in particular were the Truth and Reconciliation Commission's finding of "a systematic government programme of cultural genocide" and the conclusion in the 2015 report of the UN Special Rapporteur on the rights of Indigenous Peoples that the situation for Indigenous Peoples in Canada had reached "crisis proportions in many respects."

While organizations commended Canada's announcement of its full support of the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP), the absence of accountability mechanisms to monitor its implementation and Canada's commitment under the Declaration to uphold the principle of Free, Prior and Informed Consent (FPIC) remain a concern, including with regard to the development of natural resource projects. In particular, a National Indigenous Organization raised concerns over the report's characterization of FPIC, which it indicated does not align with UNDRIP, recommendations from UN treaty bodies, including from the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination, and decisions of the Supreme Court of Canada (e.g. *Tsilhqot'in Nation v. British Columbia*).

Regarding First Nations child and family services, some organizations noted that while the report acknowledges the decision of the Canadian Human Rights Tribunal, it would have been forthcoming to mention the non-compliance rulings against Canada and how the Government intends to directly address the challenges faced by First Nations children and families going forward.

Access to health care for Indigenous peoples, including access to sexual health and reproductive services, was mentioned by some organizations. They indicated that access to health care

services remains a challenge for Indigenous peoples living on reserve, those in rural and northern communities, as well as those who are incarcerated. Recommendations for improving health outcomes for incarcerated persons include comprehensive sexual and reproductive health care and services, such as mother-child prison programmes and access to STI testing, and the implementation of key harm reduction measures, such as prison-based needle and syringe programs and opioid substitution therapy.

Despite the Government of Canada's adoption of an action plan to address the issue of safe drinking water in Indigenous communities, organizations pointed out that the drinking water advisories for First Nations is only one of the serious issues concerning the right to water. Poor health outcomes caused by underinvestment in water and wastewater systems, lack of enforceable regulations, and bureaucratic processes have undermined the realization of water and sanitation as fundamental human rights. Federal, provincial and territorial governments were encouraged to take the appropriate legislative and budgetary measures to ensure that all Canadians have access to safe drinking water and sanitation consistent with the Government's commitment to achieving the Sustainable Development Goals.

2. Advancing gender equality and women's empowerment

While the Government's commitment to advancing gender equality was welcomed, organizations urged governments to allocate sufficient and sustainable funding and human resources to actualize this commitment, including through investments in early learning and child care, increased funding of women's ministries, and the systematic implementation, monitoring and evaluation of gender-based analysis plus (GBA+).

Organizations called for clear accountability and funding mechanisms associated with the Strategy to Prevent and Address Gender-Based Violence. While the whole-of-government approach to addressing gender-based violence was commended, organizations suggested that clear targets and timelines be integrated into the Strategy to effectively measure progress. It was also encouraged that the Government build on the Strategy to develop a national action plan.

The human rights of sex workers was only mentioned once in the draft report, as noted by some organizations who expressed opposition to the *Protection of Communities and Exploited Persons Act* (Bill C-36) that prohibits the purchase of sexual services. Reiterating the challenges faced by sex workers, organizations encouraged the Government take steps towards ensuring that the legislation complies with the *Canadian Charter of Rights and Freedoms* and upholds the right of sex workers to security of the person.

Organizations also drew attention to other forms of violence that were not addressed in the draft report, including torture by non-state actors and sexual harassment and assault on Canadian campuses, for which Canada was encouraged to adopt a sexual harassment and sexual assault policy and prevention strategy. It was also proposed that sexual violence can also be addressed through the implementation of comprehensive sexuality education with effective accountability measures.

Concerning the National Inquiry on Missing and Murdered Indigenous Women and Girls, the Government was advised not to delay taking action on known solutions until the Inquiry's conclusion. Canada was also encouraged to address the challenges that the Inquiry has faced since its initiation, including building trust with affected Indigenous communities through clear and transparent communication and a culturally sensitive family-centered process.

3. Equality, diversity and inclusion

Regarding racial and religious minorities, some organizations expressed concerns regarding Bill C-16, a Québec law prohibiting face coverings in giving or receiving public services in the province. Organizations contend that this bill violates religious freedom and expression and urged the Government of Québec to repeal it.

Governments were also encouraged to ensure non-discrimination against LGBTQ2, particularly youth, which are disproportionally at risk of discrimination in Charter protected environments. Further measures should be taken to ensure non-discrimination against queer and trans people, as well as difficulties in providing evidence of LGBTQ2 identity at refugee hearings.

Challenges faced by immigrants, refugees and migrants in Canada were addressed in the comments from several organizations. Areas of concern include the Designated Country of Origin list and the proposed creation of a human rights panel to assist in designating countries, the Safe Third Country Agreement between Canada and the United States of America, and the lack of translation services at refugee hearings. There were concerns that while the restoration of the Interim Federal Health Program was a positive development, there still exist barriers to health care for undocumented individuals. Other issues that were raised by organizations include family class immigration reforms, spousal sponsorship, the Temporary Foreign Worker Program and treatment of migrant workers, and Canada's "excessive demand" policy, particularly its impact on persons with disabilities and those living with HIV.

That immigration detention is not addressed in Canada's report was noted by some organizations, who expressed concern regarding the lack of maximum time limits for detention, safeguarding the principle of the best interest of the child, and the detainment of racialized migrants.

Canada was encouraged to ratify the ILO Convention 180 concerning work for domestic workers and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

4. Public security

In terms of crime prevention and the criminal justice system, drug policy and HIV criminalization were mentioned by some organizations. It was noted that racialized communities are disproportionately criminalized under a drug policy that emphasizes prohibition. Evidence-based alternatives to incarceration for people who use drugs were encouraged. Organizations urged Canada to limit the use of criminal law to the intentional transmission of HIV.

Some organizations noted a failure on the part of Canada to provide prisoners with equivalent access to health services, including harm reduction measures such as prison-based needle and syringe programs and opioid substitution therapy. The need for increased funding for legal aid was also noted.

There were calls for more independent oversight of detention facilities and review of the use of force by law enforcement officers. It was noted in particular that the report does not address police violence, harassment and intimidation experienced by sex workers in Canada.

Some organizations claimed that Bill C-56 (*An Act to amend the Corrections and Conditional Release Act and the Abolition of Early Parole Act*) does not address the violations of constitutional and international law regarding Canada's use of administrative segregation. While the Bill is a good first step, organizations emphasized the need for increased oversight and uniform legislation in line with international human rights norms. Meaningful amendments to the *Corrections and Conditional Release Act* are still required to protect individuals, including those with mental illness, from administrative segregation.

Regarding Bill C-59, the *National Security Act, 2017*, organizations maintain that the problematic aspects of the *Anti-terrorism Act, 2015* (e.g. public reporting responsibilities, privacy measures, protections for persons named in security certificate proceedings) remain present in the legislation and therefore requires substantial amendments to ensure its compliance with the Charter and Canada's international human rights obligations.

Organizations noted that communities of colour and Indigenous communities are disproportionately subject to racial profiling and discrimination by police officers and are over-represented in the criminal justice system. The development of concrete policies, including the strengthening of oversight mechanisms and the collection of race-based data, would ensure any reforms to the criminal justice and national security systems remove the systematic discrimination that disproportionately affects racialized communities. To address the over-incarceration of Indigenous peoples, organizations recommended that the sentencing of Indigenous peoples begin from a rebuttal presumption of non-incarceration and that the Government initiate reforms that increase reliance upon principles of rehabilitation.

It was noted that while the report addresses the sexual exploitation of children, the prevention and protection of victims of human trafficking was not included in the report despite the progress that Canada has made since its last UPR. Issues noted that relate to trafficked persons included the challenges in identifying victims of trafficking, and the need for enhanced support and protection services.

5. Economic and social rights and well-being

The sexual and reproductive health needs of young people in Canada, including the development of standardized comprehensive sexual education, and the lack of access to safe abortion care across jurisdictions were identified as issues that should be addressed by governments.

Some organizations addressed the economic and social challenges faced by racialized communities, including the lack of prioritization of racialized communities in poverty and

housing strategies; the racialized wage and employment gaps; and racial discrimination within the child welfare system. The collection of data disaggregated by ethno-racial background would facilitate the measurement of racial inequalities and disparities and the impact of laws and policies that affect racialized communities.

6. Advancing respect for human rights internationally

Canada's Feminist International Assistance Policy was commended. However, some organizations called for a clearer articulation of the policy's funding and accountability mechanisms.

Organizations welcomed Canada's creation of the Canadian Ombudsperson for Responsible Enterprise (CORE), but pointed to the need for clarity regarding the mandate and powers of the office to ensure that CORE is an effective mechanism for corporate social accountability.